

For purposes of this review, the record consists of the transcript of proceedings held before Administrative Law Judge Robert H. Foerschler on February 6, 1997. At that hearing the attorneys made certain representations and stipulations which will be identified below when relevant. Further, at oral argument the attorneys agreed the division of expenses and attorney fees should be recomputed treating Mr. Bangs' preparation of correspondence as a part of the time he expended in representing claimant rather than as

a reimbursable expense. Neither attorney objected to nor disputed the general formula the Administrative Law Judge used to apportion the fees and expenses.

ISSUES

The issue before the Administrative Law Judge was the attorney fee and expense requests of claimant's former and current attorneys. The Administrative Law Judge approved Mr. Miller's out-of-pocket expenses in the sum of \$1,410.54 and Mr. Bangs' expenses in the sum of \$711. Further, the Administrative Law Judge awarded Mr. Miller and Mr. Bangs attorney fees in the sum of \$916.81 and \$125.02, respectively. Claimant requested the Appeals Board to review Judge Foerschler's Order. Claimant contends the Administrative Law Judge erred by treating Mr. Bangs' time for dictating and preparing correspondence as an out-of-pocket expense. In addition, in its brief to the Appeals Board the respondent has requested the Appeals Board to review Judge Foerschler's Order that it pay one-half of the transcript costs for the February 1997 hearing. Therefore, the only issues before the Appeals Board on this review are the division of fees and expenses between Mr. Miller and Mr. Bangs and the division of transcript costs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the appropriate record, the Appeals Board finds as follows:

The Order should be modified.

Respondent objected to its being assessed one-half, or \$81.63, of the transcript cost of the February 6, 1997, hearing before Judge Foerschler. Respondent bases its objection upon the premise that the dispute regarding the division of fees and expenses did not involve it and respondent had no direct interest in its outcome. The Appeals Board agrees with the respondent's analysis and finds the entire cost of the transcript for the February 6, 1997, hearing in the sum of \$163.25 should be paid as indicated below.

Both Mr. Bangs and Mr. Miller represented claimant at different times in this proceeding. Claimant settled this claim in November 1996 and was awarded \$6,615.40 in permanent partial disability benefits. Apparently unable to agree to an appropriate division of fees and expenses, Mr. Miller requested the Administrative Law Judge to decide that issue.

In determining the issue of attorney fees, the Administrative Law Judge deducted expenses in the sum of \$2,121.54 from the \$6,615.40 awarded in permanent partial disability benefits, multiplied the remainder by 25 percent to obtain the sum of \$1,123.46 as the total amount of attorney fees to be divided between counsel, deducted from that amount deposition expense for the February 6, 1997, hearing in the sum of \$81.63, and then divided the remainder of \$1,041.83 between counsel based upon their respective contribution of hours expended in the claim.

As indicated above, neither attorney objected to the general formula utilized by the Administrative Law Judge. Also, neither attorney contested the Administrative Law Judge's finding that they expended \$268.60 and \$1,410.54 in identifiable out-of-pocket expenses. Additionally, they do not contest that Mr. Bangs expended an additional \$104.90 in out-of-pocket expense for photocopies, postage, and facsimiles. Mr. Miller does, however, question whether it was proper for the Administrative Law Judge to treat Mr. Bangs' time for dictating and preparing 15 letters as a reimbursable out-of-pocket expense in the sum of \$337.50. Rather, Mr. Miller contends the Administrative Law Judge should have considered such time in determining an appropriate attorney fee for Mr. Bangs. Mr. Bangs agrees.

The Appeals Board agrees with the attorneys' proposed treatment of the time in question. Further, at oral argument both attorneys agreed it was appropriate for the Appeals Board to recompute fees and expenses utilizing 150 minutes as the time Mr. Bangs expended in dictating and preparing correspondence in the Administrative Law Judge's formula.

Based upon the above, the Appeals Board recomputes the amount of out-of-pocket expenses and finds Mr. Bangs is entitled to reimbursement of expenses in the sum of \$373.50 and Mr. Miller in the sum of \$1,410.54. Adding the 150 minutes for the dictation and preparation of correspondence to the 545 minutes itemized on the statement introduced at the February 1997 hearing as part of claimant's Exhibit 3, the Appeals Board finds Mr. Bangs expended approximately 11.5 hours, or 16 percent, of the total hours expended in the claim representing claimant as compared to Mr. Miller's approximate 62.5 hours, or 84 percent, of the total hours expended. Therefore, utilizing Judge Foerschler's formula, after reimbursement of out-of-pocket expenses, the attorneys should share the sum of \$1,207.84 in attorney fees, less \$163.25 for transcription costs as indicated above, based upon their respective contribution to the total hours expended in this claim. Based upon such formula, Mr. Bangs is entitled to attorney fees in the sum of \$167.13 and Mr. Miller is entitled to the sum of \$877.46.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the \$6,615.40 awarded claimant in permanent partial disability benefits should be, and hereby is, ordered distributed as follows: to claimant the sum of \$3,623.52, to Metropolitan Court Reporters, Inc., the sum of \$163.25, to Gregory D. Bangs the sum of \$373.50 for reimbursement of out-of-pocket expenses and the sum of \$167.13 for attorney fees, and to Chris Miller the sum of \$1,410.54 for reimbursement of out-of-pocket expenses and \$877.46 in attorney fees.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Gregory D. Bangs, Overland Park, KS
Gary R. Terrill, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director